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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1992

Addendum

AUSTRIA*

[6 October 1998]

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* The initial report submitted by the Government of Austria is contained in document CAT/C/5/Add.10; for its consideration by the Committee, see documents CAT/C/SR.18 and 19 and Official Records of the General Assembly, Forty-fourth session, Supplement No. 46 (A/44/46), paras. 202-230.

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Introduction

1. Austria ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1987 (Federal Gazette No. 492/1987); the initial report was submitted in 1988 pursuant to article 19 of the Convention (CAT/C/5/Add.10).

2. The present report is a comprehensive account for the period from 1989 to August 1998 and is intended to serve as supplement to the initial report, focusing on the present legal situation, especially on those aspects which are substantively related to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. While the Republic of Austria regrets the delay in reporting, it would like to point out that a number of legislative as well as practical changes in the national framework have now been completed, so that a comprehensive report can now be made.

3. International monitoring of the protection of human rights is given high priority in Austria. The Austrian authorities undertake continuous efforts to ensure the improvement of the standard of human rights protection and are particularly interested in carrying on a continuous dialogue with the human rights organs within the framework of the United Nations and the Council of Europe. In 1958, Austria ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), article 3 of which reads as follows: "No one shall be subjected to torture or the inhuman or degrading treatment or punishment."

4. The ECHR and the Protocols thereto play a decisive role in Austria and are of constitutional standing, directly enforceable and applicable before Austrian courts of law and authorities. The ECHR and its application by the Convention organs have had a strong influence on the legal system both in the legislative and executive fields, in particular as regards the law of criminal procedure, the jurisdiction of the administrative authorities in determining matters of civil law, and the administrative criminal procedure. The protection and implementation of human rights is basically observed by public authority. In those cases where individual human rights violations nevertheless occur, there is an effective system of legal protection. After all domestic remedies have been exhausted, i.e. after ordinary appeals have been taken to the highest instance in Austria and after adequate use has been made of the available extraordinary appeals, for example by filing a complaint with the Constitutional Court or the Administrative Court, a complainant may file an individual application with the European Commission on Human Rights invoking a violation of his/her rights guaranteed by the ECHR and may subsequently also address the European Court of Human Rights or - as of November 1998 - the permanent European Court of Human Rights in Strasbourg established in accordance with Protocol No. 11 to the ECHR.

5. Furthermore, in 1989, Austria ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Federal Gazette No.74/1979). The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Austria twice, in 1990 and 1994 (see para. 49 of the present report).

6. In the past few years, the law pertaining to the Austrian security police authorities has undergone a process of renewal which has far-reaching consequences for the legal status of persons living in Austria. The starting point of this process was the Security Police Act (*Sicherheitspolizeigesetz*, Federal Gazette No. 566/1991) which entered into force on 1 May 1993. This Act, for the first time, placed the prevention-oriented activity of the police within a regulatory framework; it gives the individuals affected by a police action important subjective rights, on the one hand, and a wider scope of legal protection, on the other. At the same time, a "Code of Professional Duties" was introduced in a so-called Guideline Ordinance (*Richtlinienverordnung*/RLV, Federal Gazette No. 266/1993) which reaches beyond the sphere of competence of the security police and contains guidelines on the prohibition of discriminatory treatment of persons and the conduct of interrogations.

7. As a next step of the reform process, a fundamental revision of the provisions regulating detention on remand was implemented with the Criminal Procedure Modification Act 1993 (*Strafprozeßänderungsgesetz*, Federal Gazette No. 526). This is a first move in the direction of a comprehensive reform of preliminary criminal proceedings, which had already been due for some time.

8. As a third element of this complete reorganization of the powers of the security police, a comprehensive revision of the law pertaining to aliens was adopted in June 1997. The 1997 Aliens' Act (*Fremdengesetz*, Federal Gazette I No. 75/1998) and the 1997 Asylum Act (*Asylgesetz*, Federal Gazette I No. 76/1998) entered into force on 1 January 1998 while maintaining the general principle of the migration law which had been in force since the early 1990s. The main objective of this "integration package" was to maintain the basic principles of the legislation pertaining to migration which take into account the migratory movements in the wake of the opening of the Eastern borders, and which were characterized by the strict separation and specific treatment of individual groups of foreigners (tourists, migrant workers and asylum-seekers), on the one hand, and the prevention of the abuse of asylum rights, on the other hand; in addition the "integration package" aims at achieving greater justice in the enforcement of the law in individual cases.

9. Thus, a codification process has been undertaken which has revised large parts of the law in less than a decade and which should be completed in the upcoming legislative period by a revision of preliminary criminal proceedings (including police investigations).

I. THE SECURITY POLICE ACT (SICHERHERTSPOLIZEIGESETZ, SPG)

A. Principles of fulfilment of tasks and legal protection

10. The SPG presents a significant change regarding the way in which the activities of the police authorities and their enforcement officers are regulated, insofar as it clearly shows that a person affected by an intervention by the security police is to be regarded a legal subject, i.e. as a holder of subjective rights which can only be interfered with in specific cases and then only to the extent that this interference is commensurate with the importance of the duty to be fulfilled. A closely related aspect is that

the person affected by an official intervention is granted full legal protection, the competence for which is primarily vested in the Independent Administrative Tribunals (*Unabhängige Verwaltungssenate*).

11. An underlying objective of the SPG, which finds its expression in the above regulations, is to raise the awareness of security police officers with regard to the rights of persons affected by their actions. This is ultimately an important factor for the prevention of human rights violations.

1. Principles of fulfilment of tasks

12. As regards the fulfilment of tasks, the SPA lays down principles which

(a) Clearly indicate that the main objective of police intervention is not to serve the interests of the State but rather to protect the physical integrity of human beings;

(b) Are designed to guarantee that the rights of individuals affected by official acts committed by the security police are adequately safeguarded (principle of proportionality);

(c) Grant such persons certain minimum rights including the right to be informed at their request about the reason and purpose of the intervention and the right to submit facts that are relevant to the intervention, and to have these facts officially established;

(d) Give the officers of the public security service guidelines for their intervention which are intended to contribute to a reasonable interaction with the persons concerned and to reduce the risk of conflict.

2. The Guideline Ordinance (RLV)

13. The above-mentioned basic objective of ensuring an interaction with persons affected that respects them as holders of certain rights is expressed in the Guidelines for the Intervention of Organs of Public Security - issued in the form of an ordinance - as follows.

14. Section 5 of the RLV which is entitled "Respect for Human Dignity", provides for a comprehensive prohibition of discrimination which has special regard for the status of members of social fringe groups; in the fulfilment of their duties, the organs of public security are to refrain from any action which may create the impression of partiality or can be seen as discrimination on the ground of gender, race or skin colour, national or ethnic origin, religious affiliation, political beliefs or sexual orientation. The organs of public security are - with a few exceptions - obliged to address everybody respectfully by using the formal personal pronoun "*Sie*".

15. Anyone affected by a police action must at their request be informed about their rights and about the purpose of the police intervention (sect. 6, para. 1).

16. Persons being interrogated should, wherever possible, be permitted to sit down (sect. 6, para. 2).

17. Interrogations of arrested persons must generally be conducted on official premises (sect. 6, para. 3). In case of lengthy interrogations, breaks must be taken. Interrogations must be documented in such a way that it is possible later on to re-establish how they were conducted.

18. The organs of public security must inform arrested persons to be examined by a physician commissioned by the authority that they are free to ask for a doctor of their choice provided that this is possible without substantially delaying the examination (sect. 8, para. 3).

19. Persons affected by a police action may raise the issue of observance of the guidelines by lodging a complaint to a superior authority (*Aufsichtsbeschwerde*) which is laid down separately in section 89 of the Security Police Act. If the complainant is not satisfied with the reaction of the police authority, he or she may request a review by an Independent Administrative Tribunal.

20. It is also possible for the superior authority to use the complaint as an occasion to promote a dialogue between the complainant and the respondent officer. This procedure is intended to facilitate a settlement of the conflict which, on the one hand, gives the persons affected the feeling that their concern is taken seriously, and on the other hand, leaves room for the understanding that the escalation of a conflict is often not only the fault of one side. If the complainant is satisfied with the dialogue, the complaint may be dropped.

3. Right to lawful intervention and legal protection

21. A special feature of Austrian law is section 87 of the SPG, which grants anyone affected by an act of police intervention a subjective right that the intervention must be in accordance with the law. This is to be seen in connection with section 88, which offers persons affected by any type of interference with their rights the opportunity to submit a complaint to the Independent Administrative Tribunal. Such comprehensive legal protection against police intervention is unique in Austrian law as these instruments of legal protection normally are only provided in connection with certain acts of sovereign authority (*hoheitliches Handeln*).

B. Security Report

22. In accordance with section 93 of the SPG, the Federal Government is required to submit an annual Security Report to the Austrian Parliament. This report must also include statistics regarding the complaints raised against organs of public security under disciplinary and criminal law. The 1996 Security Report (pp. 217-218), thus contains detailed information on complaints lodged against members of the Federal Police and Federal Gendarmerie authorities. Further information is given (pp. 298 and 299) on cases in which police officers were accused of maltreatment and which were reported to the Public Prosecutor. In the year under review, there were 715 complaints and 8 convictions.

II. THE CODE OF CRIMINAL PROCEDURE MODIFICATION ACT 1993 AND THE BASIC RIGHTS COMPLAINT ACT

23. As an important phase of the comprehensive reform of preliminary criminal proceedings, the Code of Criminal Procedure Modification Act 1993 (*Strafprozeßänderungsgesetz* 1993), Federal Gazette No. 526/1993), constitutes a fundamental reorganization of the provisions concerning arrest and detention on remand.

24. The new provisions require a renewal of remand decisions within specified time limits (two weeks, one month, two months); the examining judge has to decide each time following a hearing with the defendant, the defence counsel and the prosecutor. Legal assistance is mandatory in such proceedings. A new scheme of legal aid has been set up for the purpose of providing instant legal assistance to all defendants arrested and remanded in provisional detention (*Untersuchungshaft*).

25. A defendant who is arrested at a place outside the jurisdiction of the court having issued the arrest warrant, is to be brought to this court from any part of the country within 72 hours after the arrest.

26. The new law has led to a significant (and permanent) reduction of the population in remand detention (by more than 20 per cent).

27. As far as detention is concerned, it is possible as from 1 January 1993 to have orders and decisions of criminal courts reviewed by the Supreme Court under a special Basic Rights Complaint Act (*Grundrechtsbeschwerdegesetz*, Federal Gazette No. 864/1992), to ascertain whether there has been a violation of the basic right to personal liberty, for instance by an incorrect assessment of the preconditions for detention on remand, its disproportionate length or, by an incorrect application of the law in connection with arrest or detention.

III. THE ALIENS' ACT 1997 AND THE ASYLUM ACT 1997

28. The current law pertaining to aliens and asylum matters contains some important provisions designed to counteract the risk of maltreatment.

A. Ban on expulsion and deportation

29. An explicit ban on expulsion and deportation (refoulement) within the meaning of article 33 (1) of the Convention relating to the Status of Refugees, (Federal Gazette No. 55/1955), which is in effect in Austria as an ordinary federal law in the version of the Protocol relating to the Status of Refugees (Federal Gazette No. 78/1968), has already been introduced in the Austrian law pertaining to aliens (sect. 13a of the Aliens' Police Act in the version of Federal Gazette No. 190/1990). This provision was included without any substantive changes in the 1997 Aliens' Act (sect. 57) and amended by a special procedural provision (sect. 75) which requires the authority to examine whether there is a reason to assume a risk of persecution that is relevant within the context of deportation.

30. Under the law, the expulsion or deportation of foreigners to another country is inadmissible if there are valid reasons to assume that this would put them at a risk of being subjected to inhuman treatment or punishment or to the death penalty in that country. The expulsion or deportation of foreigners to another country is not admissible if there are valid reasons to assume that their life or liberty would be at risk because of their race, religion, nationality, membership of a specific social group or their political opinions. This ban on residence-terminating measures is of an absolute nature and must be observed *ex officio* at all stages of proceedings aimed at terminating a person's right of residence. Pursuant to section 75, paragraph 1, of the Aliens' Act, the authority is obliged to decide, at a foreigner's request, whether there are valid reasons to assume that he or she is threatened in a State designated by him or her under section 57, paragraph 1 or 2, of the above Act. The only exception to that rule applies where an asylum authority has previously decided on the question of admissibility of deportation to another State or where it has found that the foreigner will be protected from persecution in a third country.

31. The Asylum Act 1997, which took effect together with the Aliens' Act on 1 January 1998, provides for a separate non-refoulement review by the asylum authorities. This is to ensure that a competent authority with expert knowledge decides on the admissibility of police measures in sensitive cases. Additionally, the asylum authorities are obliged to observe the "third country" clause, which, unlike the former law, is essentially future oriented and thus requires a prognosis with regard to the level of security to be expected in the third country. The reason is to avoid protection gaps which might result from an interpretation of the third-country rule based on the past situation.

32. Thus, it is clearly stipulated that, in the face of a threat of inhuman treatment or punishment or the death penalty, any measure terminating the right of residence would be inadmissible even in cases where article 33, paragraph 2, of the Convention relating to the Status of Refugees is applicable. For, under this provision, a residence-terminating measure would also be admissible under article 33, paragraph 1, of the Refugee Convention in case of a deportation ban if the refugee, for important reasons, constitutes a danger for the security of the Republic of Austria or poses a threat to the community because of a final conviction for a serious crime.

33. The provision concerning the restricted right of residence (sect. 15, Asylum Act) must be seen in connection with the non-refoulement review. Under that rule, the asylum authorities are obliged to grant those aliens whose application for asylum has been finally rejected for other than asylum exclusion reasons (art. 1.F of the Geneva Convention) and who are not legally entitled to stay on the Austrian federal territory a restricted residence permit if the non-refoulement review has shown that the rejection, expulsion or deportation of such aliens is not admissible. This is to ensure that foreigners who cannot be made to leave the country are granted a right to stay as long as the situation prevails. Thus, a restricted residence permit is usually granted in conjunction with a negative decision regarding asylum; it can, however, also be granted at a later stage when a residence permit has initially been granted and then ceased to apply.

34. Finally, a deportation under section 57, paragraph 6, of the Aliens' Act 1997 is not admissible as long as the European Commission on Human Rights or the European Court of Human Rights has indicated an interim measure, i.e. that an alien cannot be expelled until the Commission or the Court has examined the application.

B. Independent Federal Asylum Tribunal (Unabhängiger Bundesasylsenat)

35. The lawmakers have upgraded the status of asylum proceedings by establishing an independent appeal authority in asylum matters, the so-called Independent Federal Asylum Tribunal (sect. 38 of the Asylum Act 1997) whose members are appointed for an unrestricted term of office and who are not subject to superior orders. The court-like organization of the new authority, which - unlike the Federal Asylum Office, which is subordinate to the Federal Minister of the Interior - is established within the sphere of competence of the Federal Chancellor, thus constitutes a tribunal within the meaning of article 6 of the European Convention. It is thereby ensured that decisions in asylum proceedings, which are in substance closely related to universally recognized human rights and which frequently contribute significantly to the prevention of torture and other cruel, inhuman or degrading treatment or punishment, are taken under optimal circumstances and with an adequate level of quality.

C. Protection of displaced persons

36. The Aliens' Act 1997 also provides a special contribution to the prevention of torture in that it protects "displaced persons" (sect. 29) even if they do not come within the scope of protection of the Geneva Refugee Convention. Under paragraph 1 of this provision, the Federal Government has the authority, with the consent of the Main Committee of the National Council (*Nationalrat*), to grant groups of aliens who are directly affected and who cannot find protection elsewhere a temporary right of residence during times of armed conflict or under other circumstances threatening the security and safety of entire ethnic groups. This system has already proved extremely helpful during the crisis in Bosnia and Herzegovina.

37. In order to ensure that a sufficient remedy is available in periods where an ordinance by the Federal Government cannot be issued with the consent of the Main Committee of the National Council because the extent and duration of the armed conflict in the region in crisis cannot sufficiently be assessed, or because the National Council cannot deal with the matter promptly enough, for instance, during the summer recess, it is possible, with the consent of the Federal Minister of the Interior, under section 10 paragraph 4, of the Aliens' Act, to grant displaced aliens a three-month residence permit ex officio on humanitarian grounds even if there were important reasons to refuse such a permit. The availability of the possibility for an adequate reaction during the earliest indication of a crisis is thus ensured.

IV. SELECTION AND TRAINING OF POLICE OFFICERS

38. The selection and training of police officers constitutes an important contribution towards the prevention of torture or inhuman treatment.

A. Selection of police officers

39. In January 1996, the Minnesota Multiphasic Personality Inventory Test (MMPI), which is used to examine the suitability of persons applying for employment or life tenure status, was introduced in Austria. The test is designed to detect reliably all latent psychological illnesses and all pathological personality disorders. In the case of unusual test results an expert in the field of psychiatry is consulted to ensure that all persons with major personality disorders are excluded from recruitment into the public security service.

B. Education in the course of basic vocational training

40. During their basic training police officers are instructed in the field of constitutional law with a view to providing them with an understanding of basic rights and to teaching them how to perform their duties with respect for human dignity. The training programme for senior supervisors includes a separate course entitled "Human Rights" which emphasizes the importance of these fundamental rights. Within the framework of further vocational and in-house training, there are frequent references to the importance of human rights and the relevant laws, especially the Security Police Act. In addition, sections 5 and 6 of the Guideline Ordinance contain important provisions concerning "respect for human rights" and "dealing with persons affected by a police action". Criminal investigation officers, who are primarily responsible for examining persons arrested, receive special training in interrogation techniques.

C. Human Rights Week

41. It is the conviction of the Federal Ministry of the Interior that lasting prevention of police interference cannot be achieved only by conducting more thorough reviews, but needs to be rooted in the police officers' understanding of their roles and duties. With the aim of launching a reflection process on the relationship between the basic rights of persons affected by police actions and the statutory duties of police officers, a special Human Rights Week was held from 2 to 6 February 1998, in the course of which key members of the police force from all parts of the Ministry were informed about the importance of human rights in everyday practice.

42. This project was initiated following charges by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment concerning cases of mistreatment during police custody. The main target group of the project - for reasons of cost - comprised senior police officers such as heads of district gendarmerie departments or high-ranking security police staff and detectives at the Federal Police Directorates. It is gratifying to note that the workshop was organized in cooperation with Austrian NGOs such as Caritas and Amnesty International.

43. The main issues covered in the workshop included the conduct of police officers vis-à-vis criminals and suspects as well as human rights violations against foreigners, fringe groups and minorities. By presenting some examples

of their own, participants in the workshop were able to widen and deepen their understanding of sensitive human rights matters arising in the performance of their duties and to develop alternative ways of how to act.

44. While there was some initial scepticism on the part of the participants, the workshop was able to break down barriers of prejudice on both sides; this was largely due to the involvement of outside groups.

45. It was remarkable to note that the participants developed specific projects designed to communicate the issues and problems to their staff. An important contribution came from the Wolfsberg District Gendarmerie Department, which had realized an impressive project on the topic of "gendarmerie authorities responding to citizens' needs" which to a large extent also had to do with human rights. Remarkably, the project has led to a reduction in the number of complaints in the district by half. In the light of this positive experience, the other participants suggested that more such workshops or seminars be conducted, that the subject matter be integrated in the curriculum of further vocational training courses, that the scope of basic training be amended and enlarged and that panel discussions be organized with representatives of NGOs and citizens' groups.

46. Finally, it may be noted that the Human Rights Week workshop was not a one-time undertaking but rather the beginning of a project which should be continued in the future. This aim, however, can only be achieved if the further training of educators ("multipliers") is guaranteed, if all members of the security police force are included in the target group, and if certain ideas concerning the basic and further training of police officers are implemented.

V. EXAMINATIONS BY MEDICAL OFFICERS

47. The Federal Ministry has already instructed the gendarmerie and police authorities (by ministerial orders of 6 and 15 February 1990, respectively) to ensure that examinations by the competent medical officer may be conducted in police prison facilities without prior notice. The security authorities were specifically reminded of these ministerial orders in 1996, on the occasion of the visit of the CPT to Austria. The number of such examinations was set at a minimum of 12 per year.

48. Pursuant to section 5 of the Service Rules for Medical Officers in the Federal Police Authority, any injuries observed in the course of an examination by a medical officer are to be noted in the medical report, which must provide a detailed description of the injuries and of the type of traces or visible signs or consequences of physical harm that were observed, as well as information about the alleged physical harm incurred, its causes and consequences. When the new service rules for medical officers are issued, it will be important to re-emphasize the above provisions. There is a general obligation to examine any offence, including possible physical injuries, in accordance with the pertinent laws. This applies in particular to those officers of the public security service who are performing supervisory functions.

VI. THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

49. The CPT visited Austria twice, from 20 to 27 May 1990 and from 26 September to 7 October 1994. In both of its reports, the CPT criticized certain aspects of police arrests. In particular, the CPT pointed out on both occasions that people being arrested by the security authorities are at risk of being maltreated. Both the reports of the CPT and the comprehensive observations by the Austrian Federal Government have been published (cf. Council of Europe documents CPT/Inf (91) 11 of 3 October 1991 and CPT/Inf (96) 29 of 31 October 1996). (In a letter of 3 October 1996, the CPT expressed the wish that the Austrian observations on the CPT's report on its second visit to Austria be amended in some aspects. This request was complied with on 31 January 1997.)